

# Thailand

	2014	2015		
<b>Internet Freedom Status</b>	<b>Not Free</b>	<b>Not Free</b>	<b>Population:</b>	<b>66.4 million</b>
Obstacles to Access (0-25)	11	9	<b>Internet Penetration 2014:</b>	<b>35 percent</b>
Limits on Content (0-35)	21	22	<b>Social Media/ICT Apps Blocked:</b>	<b>No</b>
Violations of User Rights (0-40)	30	32	<b>Political/Social Content Blocked:</b>	<b>Yes</b>
<b>TOTAL* (0-100)</b>	<b>62</b>	<b>63</b>	<b>Bloggers/ICT Users Arrested:</b>	<b>Yes</b>
			<b>Press Freedom 2015 Status:</b>	<b>Not Free</b>

\* 0=most free, 100=least free

## Key Developments: June 2014 – May 2015

- Military courts passed the longest sentences on record for insulting the monarchy online in 2015, including 56 years and 60 years in prison, reduced to 28 and 30 years on confession (see **Prosecutions and Detentions for Online Activities**).
- 400 people have been summoned and subjected to interrogation in various military compounds, often revealing their social media passwords as a condition of release (see **Intimidation and Violence**).
- "Digital economy" legislation drafted during the coverage period would erode user privacy and free speech rights online (see **Regulatory Bodies** and **Legal Environment**).

## Introduction

More Thai internet users were harassed and arrested during the coverage period than ever before in the wake of the 2014 coup. On May 20, 2014, General Prayuth Chan-ocha, commander of the Royal Thai Army, declared martial law. Two days later, as head of the military junta calling itself the National Council for Peace and Order (NCPO), the general cancelled the constitution, annulled the House of Representatives, and announced that the junta will rule the country for at least a year and five months before arranging a general election. The coup d'état was announced via all media, including Facebook and Twitter.<sup>1</sup>

In the following weeks, the junta issued orders forbidding traditional media broadcasts, censored online news, and arrested or monitored hundreds of critics. Many of these measures were justified as part of a “returning happiness to Thai people” campaign, on grounds that controlling freedom of speech was necessary while the situation remained “abnormal.” Yet the junta’s plans, which include amending significant laws and passing a slew of new ones, will have a lasting impact.<sup>2</sup> It is attempting to pass a set of wide-ranging “digital economy” laws, including the country’s first cybersecurity and personal data laws. These draft laws came under heavy criticisms from academics and internet freedom activists, who argued that they would heavily impact privacy, curtail freedom of speech, and hamper the growth of the digital economy, contrary to its name.

Since the coup, academics and activists have been subject to overt surveillance, and more than 400 people have been summoned and subjected to interrogation in various military compounds throughout Thailand. Many were coerced to give up their login passwords to email and Facebook, so that authorities could monitor their communication.

The state already had ample means to infringe on users’ online freedoms in the form of computer-related crimes laws enacted after the 2006 coup, as well as criminal defamation charges, and oppressive lèse-majesté provisions in the penal code that punish criticism of the nation’s revered monarchy. Successive governments have blocked tens of thousands of individual websites and social media pages, and imprisoned several people for disseminating information and opinion online or via mobile phones under these laws. Anyone can lodge a lèse-majesté or defamation complaint based on any online content in Thailand, opening the door for various actors to use the charges against political opponents or to curb civic advocacy in the highly polarized political environment. Under the junta, these charges were heard by military tribunals, which have passed significantly longer sentences with no avenue for appeal. Punishments for insulting the monarchy online in 2015 exceeded 50 years in prison at least twice, though both the sentences were halved on the basis of subsequent confessions.

## Obstacles to Access

*Internet penetration has increased steadily in recent years, in part thanks to affordable government-run access programs, though usage remains concentrated in Bangkok and other urban centers, and speed and quality of service can vary. After the May 2014 coup, officials declared their intention to*

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1 Aim Sinpeng. “Thailand’s cybercoup,” *The Washington Post*, May 27, 2014, <http://wapo.st/1EQNeM2>.

2 “NCPO orders ministries to have speedy overhaul of regulations,” *The Nation*, June 4, 2014, <http://bit.ly/1L4Xzow>.

*establish a single gateway to the international internet, potentially enabling them to control or even shut down access nationwide.*

## Availability and Ease of Access

Internet penetration was at 29 percent in 2014, up from 26 percent in 2013; mobile penetration rose from 140 to 144 percent in the same period.<sup>3</sup> Most Thai internet and smartphone users reside in the Bangkok greater metropolitan and southern regions, which boast a higher average household income. The lowest penetration is in the northeast, in part due to lack of service.<sup>4</sup>

During the coverage period, the junta government approved the Provincial Electricity Authority's THB 1,980 million program to extend electricity to remote areas.<sup>5</sup> Under the "Return Happiness to the Thai People" program, the NCPO continued the ICT Free Wi-Fi program initiated under the previous government. This program, funded by the Broadcasting and Telecommunications Research and Development Fund for the Public Interest, offers wireless connections in various government and private buildings, which allow up to 15 users at a time to register with their national identification numbers for 20 minutes of free access per session, up to two hours per day. In 2014, this program had installed 120,000 access points countrywide in collaboration with select ISPs, and aims to install 130,000 more in 2015.<sup>67</sup>

Partly as a result of efforts like this, official 2013 figures state 39 percent of Thai users accessed the internet free of charge, while another 23 percent paid less than THB 200 (US\$6.73) a month.<sup>8</sup> Connections reportedly function at speeds around 12 Mbps,<sup>9</sup> most reliably in the greater Bangkok area.

## Restrictions on Connectivity

The government has not historically blocked or throttled internet and mobile connections for political or security reasons. Within a week of the May 2014 coup d'etat, however, the Deputy Minister of Information and Communication Technology disclosed that he would propose a "national digital internet gateway" for internet service providers (ISPs) to use in connecting abroad. This initiative would be a cooperation between TOT and CAT Telecom, two state-owned telecom operators that have their own gateways, and six other ISPs. The deputy minister stated that this initiative would make it easier for the Ministry of Information and Communication Technology (MICT) to interrupt access directly.<sup>10</sup> There were no further developments announced during the coverage period, though news reports in late 2015 said government agencies were exploring the legal foundation for

3 International Telecommunication Union, "Percentage of Individuals Using the Internet, 2000-2014," <http://bit.ly/1cblxxY>.

4 Telecommunications Data and Research Center, "Report on the Survey of Thai People's Telecom Behavior 2012-2013," National Broadcasting and Telecommunication Commission, [http://www.nbtc.go.th/wps/PA\\_WCMLocalRendering/jsp/html/NTC/download/NBTC-SurveyReport2556.pdf](http://www.nbtc.go.th/wps/PA_WCMLocalRendering/jsp/html/NTC/download/NBTC-SurveyReport2556.pdf).

5 Committee to facilitate and accelerate implementation of government policy, "Six-month performance (12 September 2014 – 10 March 2015) of Prayut Chan-Ocha Government," [in Thai] March 2015, <http://bit.ly/1J0UoZd>.

6 ASTV Editor, "Ploughing ahead for "ICT Free Wi-Fi" – additional 150,000 access points in 2014" [in Thai], *Cyber Biz*, August 11, 2013, <http://bit.ly/1KHjPq0>.

7 "ICT Free Wi-Fi 130,000 points nationwide, available in January 2015," [in Thai], *ICT Free Wi-Fi*, December 27, 2014, <http://bit.ly/1EQNURK>.

8 National Statistical Office, "The 2013 Information and Communication Technology Survey in Household," <http://bit.ly/1JZY01I>.

9 "Download Index," Net Index, accessed June 21, 2012, <http://www.netindex.com/download/2,23/Thailand/>.

10 Thai Netizen Network, "Looking back at LINE: Thai government's attempts at surveillance," [in Thai], January 7, 2015, <http://bit.ly/1YknSF>.

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a single gateway.

Thailand's international bandwidth usage amounted to 1,563 Gbps in May 2015, and domestic bandwidth amounted to 2,323 Gbps, 195 percent and 132 percent higher than the previous year, respectively.<sup>11</sup>

## ICT Market

The number of fixed-line internet users declined in 2014, while the number of mobile users continued to increase. As at the end of 2014, there were 97.10 million mobile numbers in Thailand, or an average of 1.4 numbers used per person. Thai people spend an average of THB 192 (US\$ 5.6) per month on mobile expenses.<sup>12</sup>

High-speed internet is still concentrated in a handful of large providers. According to statistics published in 2014, True Internet remained the market leader with a 37 percent market share, followed by TOT, a state-owned enterprise, with 31 percent, and 3BB at 29 percent. All other providers combined only amount to a 4 percent share of the market.<sup>13</sup>

## Regulatory Bodies

Since the May 22 coup d'état, there has been very little news on the progress of policies and plans that the MICT previously announced. This is not only because the junta government has centralized power, but also because the ministry itself is in the midst of a transition that is likely to lead to a power reshuffle. In December 2014 and January 2015, the Thai Cabinet approved draft laws establishing a Digital Ministry for Economy and Society and a Commission for Digital Economy and Society (CDES). On January 6, 2015, the Cabinet approved changing the ICT Ministry's name to Digital Ministry for Economy and Society, and a restructuring of it in accordance with the subcommittees outlined in the draft digital promotion law: hard infrastructure, soft infrastructure, service infrastructure, digital society, knowledge resources, and digital economy promotion. Yet the process stalled amid disputes over the placement of the word "Digital" in the title, and the ministry's status was unclear at the end of the coverage period.<sup>14</sup>

The 11-member National Broadcasting and Telecommunication Commission (NBTC), an independent regulator viewed as broadly fair,<sup>15</sup> still managed the industry as of May 2015, but its role was under threat. A simultaneous revision to the National Broadcasting and Telecommunication Commission law would transform NBTC from an independent regulator to a government agency under the jurisdiction of CDES. Surangkana Wayuparb, Director of Electronic Transactions Development Agency (ETDA) as head of digital law drafting team, said that the NBTC would remain independent under the revised law; however, the state will be in charge of policy. The CDES will be empowered to penalize noncompliant government or private entities, and will take over the allocation of spectrum for state

11 Internet Information Research Network Technology Lab, "Internet Bandwidth, National Electronics and Computer Technology Center," <http://bit.ly/1F3cbEd>.

12 NBTC, "Telecommunications industry: 2014 Q3 summary overview" (The National Broadcasting and Telecommunications Commission, September 2014).

13 NBTC, "Thailand Telecommunication Indicators Yearbook: 2013-2014" (Bangkok, Thailand: NBTC, 2014).

14 "Deputy ICT Minister prepares for digital ministry," *Than News*, January 23, 2015.

15 Komsan Tortermvasana, "NBTC approves spectrum, broadcasting master plans," *Bangkok Post*, March 22, 2012, <http://bit.ly/1XQUw8A>.

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and public interest uses, while the NBTC will only allocate spectrum for commercial use.<sup>16</sup> Many analysts believe this would hinder Thailand's spectrum allocation.

The legislation was part of a "digital economy" strategy which the government said would promote the economy. At the end of the coverage period, a total of ten new laws or revisions are pending review by the Council of State before further submission to the junta-appointed National Legislative Council, all of which have raised concerns.<sup>17</sup> Civil society and private sector actors called the laws obstructive, and criticized the focus on creating new agencies with broad powers. The draft laws would also transfer assets belonging to the Broadcasting and Telecommunications Research and Development Fund (BTRDF) under the existing NBTC law to a new "Fund for Developing Digital for Economy and Society" (FDDES). While the BTRDF is considered to operate in the public interest, the FDDES would be used to finance state or private "digital economy operators," a potential conflict of interest.<sup>18</sup> Furthermore, the draft laws also stipulate that representatives from state-owned TOT and CAT Telecom—which, as telecommunications providers, operate under licenses from the NBTC—would be appointed to the CDES. This would effectively give the regulated companies powers over the regulator, undermining the principle of free and fair competition.<sup>19</sup>

In July 2014, the NCPO issued an order to delay a pending 4G spectrum auction for a year.<sup>20</sup> Somkiat Tangkitvanich, Chairman of Thailand Development Research Institute, said that the delay may have been designed to allow the new laws to pass more control to the CDES.<sup>21</sup> The auction is not expected to take place in 2015 because of a lack of preparation.<sup>22</sup>

## Limits on Content

*Since the May 2014 coup, both the NCPO and the junta-appointed government have issued many orders and decrees that directly block online content that pertains to criticisms of the Thai monarchy, the NCPO, or the government. The form of censorship changed from obtaining a court order pursuant to Thailand's existing computer crimes law, to verbal requests for "cooperation." Despite more pervasive censorship and pressure from the authorities, online space remains the easiest venue for dissidents and activists.*

## Blocking and Filtering

Although Thailand has long been heavily censoring websites, the censorship process became easier and faster after the coup. During the reporting period, the NCPO issued a number of decrees and orders governing content:

16 Thai Netizen Network, "weekly feedback after Cabinet approved 10 draft digital economy-cybersecurity laws," [in Thai], January 11, 2015, <http://thainetizen.org/2015/01/digital-economy-cyber-security-bills-comments/>.

17 "Cabinet approved NBTC overhaul: reduced to one board-lessen spectrum role-confiscate income to digital fund," *Prachachat*, January 6, 2015, [http://www.prachachat.net/news\\_detail.php?newsid=1420548804](http://www.prachachat.net/news_detail.php?newsid=1420548804).

18 Thai Netizen Network, "Drafter insist: 'security' in draft cybersecurity bill is information security, not military security," [in Thai], February 3, 2015, <http://thainetizen.org/2015/02/seminar-nbtc-surangkana-somkiat/>.

19 Thai Netizen Network, "Want real digital economy+cybersecurity? National Legislative Council must disapprove the whole set of draft digital economy laws," [in Thai] February 20, 2015, <http://thainetizen.org/2015/02/seminar-cyberspace-law-security-privacy/>.

20 Komsan Tortermvasana, "Regulator confirms delay in 4G auctions," *Bangkok Post*, February 25, 2015, <http://bit.ly/17VjGgf>.

21 "Exposed! 'General P' ordered 4G next year," [in Thai], *Cyber Biz*, accessed February 28, 2015, <http://bit.ly/1QGZboZ>.

22 Chavarong Limpattamapani, "4G auction mystery: delay is deemed corruption?" *Thai Rath*, February 27, 2015, <http://bit.ly/1KStM3O>.

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- NCPO Announcement 18/2014 banned news reporting that disrupts national security, peace and order;
- NCPO Announcement 12/2014 asked social media users and operators to prevent content that incites violence or provokes protests, is illegal, or opposes NCPO rule.
- NCPO Announcement 17/2014 ordered ISPs to monitor for, and prevent dissemination of, any information that distorts facts, could provoke disorder, or affects national security;
- NCPO Announcement 26/2014 mandated surveillance and monitoring of social media by military agencies.<sup>23</sup>

In addition to these orders, the NBTC, in its role as regulator, requested that every ISP monitor and censor online content that may cause conflict and disrupt peace and order.<sup>24</sup>

Prior to the 2014 coup, the process to block websites was more rigorous, though it still lacked transparency. The competent officer at the Ministry of Information and Communication Technology (MICT) had to obtain court warrant after approval from the minister in order to block websites in accordance with Thailand's computer crimes law. After the coup, public officials at any level, as well as ISP employees, were empowered to block websites directly, using their own judgement, under the auspices of the above-cited NCPO orders. As a result, there are no longer official censorship statistics.

Content that was most censored after the coup can be classified into two main categories: criticism of the Thai monarchy, and criticism of the NCPO or junta-appointed government. Blocked websites include foreign news websites such as Reuters and the UK-based *Daily Mail* newspaper; domestic news websites such as *Prachatham*; websites of human rights groups such as Human Rights Watch; academic websites such as Midnight University and Nitirat; personal websites of political bloggers and activists; and many Facebook and YouTube pages that contain anti-coup material.<sup>25</sup>

## Content Removal

As with blocking, takedown requests were expedited and decentralized after the coup. The new process is highly unsystematic and uncoordinated to the point of seeming arbitrary. On February 6, 2015, the ISP CS Loxinfo called the webmaster of the Isra Institute's Isra News Agency to request that the website take down a news article disclosing assets belonging to the brother of the leader of the junta. CS Loxinfo told the site that the article was perceived as instigating dissent. When the website operators contacted the MICT, however, the ministry could not verify the source of the request.<sup>26</sup>

The NCPO also harasses individuals to remove content from social media pages. Thanapol Eaw-sakul, the publisher of *Fah Diaw Kan* ("Same Sky Books") magazine, was among many individuals

23 iLaw, "Before-after coup: self-censorship, online media censorship, community radio shutdowns, and other incidents," January 6, 2015, <http://freedom.ilaw.or.th/blog/Other2014>.

24 Thai Netizen Network, "Looking back at LINE: Thai government's attempt at surveillance," [in Thai], January 7, 2015, <http://bit.ly/1YknSF>.

25 iLaw, "The report on online media suspension after the 22 May 2014 coup d'etat," 2014, <http://freedom.ilaw.or.th/node/131>.

26 "CS Loxinfo said NCPO ordered 'Isra' to block Prayut's brother's news," *Isra News*, February 9, 2015, <http://bit.ly/1F3bjzg>.

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briefly detained in mid-2014 and forced to sign an agreement not to publicly criticize the coup as a condition of release. In July 2014, Thanapol published opinions on various NCPO and government policies on his personal Facebook account. An army officer telephoned ordering him to remove the content on grounds that he was to post no political content that may create misunderstanding or a “bad attitude” toward the coup. Thanapol removed the posts, but documented the conversation on Facebook instead.<sup>27</sup> In October 2014, the *Fah Diaw Kan* Facebook page described army officers disrupting a book fair event with political writers and academics. Once again, an army officer asked Thanapol to erase the post, claiming it made him feel uncomfortable.<sup>28</sup>

Activists were also ordered to stop using Facebook for communication, including Krisdakorn Silalaksa, who was ordered by the army to cease his activities on Facebook in November 2014. He was a key advocate for the permanent opening of Pak Mun Dam sluice gates in Ubon Ratchathani province to allow fishing, a contentious issue between grassroots movements and successive Thai governments. The army also asked him to shut down his personal Facebook page because it contained “inappropriate” opinions.<sup>29</sup>

Facebook removed content deemed to be *lèse-majesté* 30 times in the second half of 2014 based on requests from the Ministry of Foreign Affairs or the Thai CERT (Computer Security Incident Response Team). This represents a sharp rise from the five times requests with which it complied in the first half of 2014; it removed no content in late 2013.<sup>30</sup>

## Media, Diversity, and Content Manipulation

The slew of orders regulating content increased self-censorship and undermined the diversity of information available on the internet in Thailand. NCPO Announcement 14/2014 banned media interviews with any political actor who is not civil servant, yet the junta leader who appointed himself interim prime minister broadcast his own views nationwide on prime time TV several times a week.

Journalists trying to bypass the restrictions were censured. Wassana Nanuam, one of Thailand’s most famous military correspondents, described the daily routine of ousted Prime Minister Yingluck Shinawatra in narrative form in *The Bangkok Post* to avoid an interview format. She was reprimanded by the NCPO nevertheless, and apologized publicly. The article was removed from the *Bangkok Post* website.<sup>31</sup>

Many media chose to self-censor in the oppressive atmosphere. *Jaw Kaw Tuen* (“Shallow News”), a popular satirical internet TV program, temporarily suspended broadcasts after the coup until October 2014.<sup>32</sup> Separately, Pinyo Trisuriyathamma, a TV host, announced on June 9, 2014 that he decided to terminate the Amarin Newsnight program on one of the new digital TV channels, in order to

27 “NCPO asked cooperation from ‘Thanapol – *Fah Diaw Kan*’ – don’t post statements that may mislead people,” [in Thai], *Matichon Online*, July 4, 2014, <http://bit.ly/1ii6q14>.

28 “Army not comfortable, asked *Fah Diaw Kan* editor to erase Facebook status, went to see ‘Prajak,’” [in Thai], *Prachatai*, October 19, 2014, <http://prachatai.com/node/56088>.

29 iLaw, “Before-after coup: self-censorship, online media censorship, community radio shutdowns, and other incidents”.

30 James Martin, “Thailand: Facebook content removal requests rise sharply after junta,” *Asian Correspondent*, March 16, 2015, <http://bit.ly/1BrC2MW>.

31 Wassana Nanuam, “‘Wassana’ explained article on Yingluck’s life after coup,” [in Thai], Facebook post, November 24, 2014, <http://on.fb.me/1YdnEat>.

32 iLaw, “The report on online media suspension after the 22 May 2014 coup d’état”.



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preserve the staff's professional principles.<sup>33</sup>

There was no public documentation of paid actors manipulating political content on the internet during the coverage period, though officials encouraged citizens to monitor one another online (see, Surveillance, Privacy, and Anonymity), and many organized informally to harass the junta's opponents (see Intimidation and Violence).

## Digital Activism

Despite the dramatic uptick in persecutions and arrests since the coup, the online space remains a powerful outlet for individuals to communicate and organize political activities. In February 2015, the Foundation for Internet and Civic Culture, which is popularly known under its old name, the Thai Netizen Network, gathered over 20,000 signatures from people opposing the junta's 10 digital laws, on grounds that they restrict freedom of speech and infringe upon privacy, and that the drafting process lacks public participation.<sup>34</sup> Following the protest, the government's drafting team stated that they would listen to public opinion. However, though the Council of State held one public hearing of one subsequent draft of these laws, the process remained as secretive as ever.

A number of outspoken activists and academics fled Thailand post-coup, but remain active on social media. Somsak Jiamteerasakul, a prominent historian and ex-professor at Thammasat University, re-located abroad and continues to publish his commentaries and political analysis via Facebook. Being physically outside the country allows these people to be more outspoken.

## Violations of User Rights

*An unprecedented number of internet users, bloggers, citizen journalists, and independent media were persecuted in 2014 and 2015. In addition to using existing laws such as the computer crimes law and lèse-majesté law harshly, the NCPO under martial law also issued numerous decrees and orders that severely infringe upon online rights. Moreover, the set of 10 draft digital laws that the Cabinet put forward in late 2014 and early 2015 is likely to have a long-term impact on the Thai online community if they are passed, granting the government vast surveillance and censorship powers.*

## Legal Environment

Article 45 of the Constitution of the Kingdom of Thailand 2007 guarantees broad freedom of speech, but was replaced with a 2014 interim constitution after the coup d'état. Although it maintains the same safeguards, Thailand remains under martial law, which prohibits individuals and the media from any public political activity.

As in past years, the main legal apparatus used to charge internet users remains the charge of "infringing national security" under two laws, namely Clause 14 of the 2007 Computer related Crime Act (CCA) pertaining to content that affects national security, and Clause 112 of the criminal code pertaining to lèse-majesté. The CCA groups these online speech offenses with criminal activities like

33 Pravit Rojanaphuk, "'Amarin Newsnight' Ends under Climate of Coup," *The Nation*, June 11, 2014, <http://bit.ly/1McDoUw>.

34 "21,000 oppose new cyber laws," *Bangkok Post*, February 3, 2015, <http://www.bangkokpost.com/news/general/465262>; Thai Netizen Network, "4 civil society organizations asked Constitution drafters, NLA, NRC to review 'digital security' laws," [in Thai], February 3, 2015, <http://thainetizen.org/2015/02/civil-society-groups-submit-letters-legislators-cybersecurity-concerns/>.



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hacking or posting obscene material. The NCPO separately issued many decrees and orders that directly curtail freedom of speech.

The enforcement of existing laws and NCPO orders became more severe after NCPO Announcement 37/2014 on May 25, 2014, which stated that civilians conducting political activity would be court martialed. The military court that tries these cases is a one-step court with no appellate or higher division. In cases involving internet users that have already been tried, the military court has handed down more severe punishments. In lèse-majesté cases judged between 2010 and 2014 (during which period the number of cases brought to trial showed a marked increase), the regular courts handed down average jail terms of 4.4 years out of a possible 3 to 15 years. From the 2014 coup onward, sentences issued by martial courts averaged 10 years imprisonment, reduced to 5 years after confession.<sup>35</sup>

The NCPO is pushing a “digital economy” policy through a set of 10 draft laws. The package would revise the e-commerce law, the computer related crimes law, the National Broadcasting and Telecommunication Commission law, and the Electronic Transactions Development Agency law, and would create new laws for cybersecurity, personal data protection law, digital economy promotion, the Fund for Developing Digital for Economy and Society, the Commission for Digital Economy and Society, and the Ministry for Digital Economy and Society.<sup>36</sup>

The appointment of a new commission, the Commission for Digital Economy and Society (CDES), is central to the policy, and would assume responsibility for every facet of digital and technology regulation. Sittichai Pokai-udom, advisor to the deputy prime minister, justified granting the commission vast power, describing it as an attempt to improve on past, failed attempts to implement an e-government strategy. Yet the policy seemed geared toward consolidating control online. The draft CDES law stipulates that CDES would have authority over every other ministry and government agency, including the power to initiate disciplinary action to any government official or citizen who does not comply with their orders.<sup>37</sup> The laws would also grant authorities lawful interception powers without a warrant and based on a perceived “threat,” which is not properly defined in the draft cybersecurity law.

The revised criminal procedural law—which is not included in the digital economy package, but is also pending before the National Legislative Council—separately grants surveillance powers to a police official on the authorization of a superior and a court. The draft stipulates a wide range of offenses for which surveillance powers are lawful: in addition to violations of national security and organized crime, it includes very broad categories like “complex” crimes.<sup>38</sup>

Under a separate draft law on the “prevention and suppression of materials that incite dangerous behavior,” officials would require a warrant to access any private information that is deemed to provoke sexually deviant acts, child molestation, child suicide, child torture, mass suicide, drug use, terrorism, larceny, murder, or tortuous acts. Under this law, the creator and distributor of said information faces one to seven years imprisonment and a fine of THB 700,000 (US\$19,690) maximum; in

35 iLaw, “2014 Situation Summary Report 2/5: Lèse Majesté Cases: One Step Forward, Three Steps Backward,” *Freedom of Expression Documentation Center*, April 21, 2015, <http://bit.ly/1LyRwV5>.

36 Thai Netizen Network, “Thailand’s Digital Economy-Cyber Security Bills,” January 15, 2015, <http://bit.ly/1yfb4qg>.

37 Thai Netizen Network, “Sittichai Pokai-udom: don’t worry, we based cybersecurity law on Homeland Security Act; government entity is guilty if it does not obey order of digital committee,” [in Thai], February 6, 2015, <http://bit.ly/1ix4bkH>.

38 iLaw, “draft criminal procedural law amendment: add wiretap authority, anyone exercising Miranda right is to be speculated guilty,” [in Thai], January 17, 2015, <http://ilaw.or.th/node/3400>.

addition, any “access provider” (as defined by the existing computer related crime law) that knows such information exists in the computer system under their control but does not remove it also faces a maximum five year jail term and THB 500,000 maximum fine.<sup>39</sup>

Besides the problematic content of these laws, critics called the lawmaking process, which lacked participation from relevant stakeholders or public hearings, rushed and secretive. The Electronic Transactions Development Agency director who heads the legal drafting team said the top-down drafting process resulted from the urgency of the policy for the interim government.<sup>40</sup> But they also harassed internet users and civil society groups who expressed alarm about the laws. On February 1, 2015, when students hosted a seminar on rights and freedoms under the pending laws, a military officer threatened the organizers for not requesting prior permission for the event and inserted himself, uninvited, as one of the panelists.<sup>41</sup> Later that month, in the wake of online protests, authorities conceded they may remove some clauses of concern, combine some laws into new ones, and host closed-door hearings before submitting revised laws to the National Legislative Council for a vote; however, the process remained opaque.<sup>42</sup>

## Prosecutions and Detentions for Online Activities

After the coup, the NCPO summoned hundreds of people to report for questioning in order to suppress potential dissent, and formally arrested people who mobilized public protests. Most of the people who were arrested were detained for seven days, the maximum duration allowed under martial law. Sombat Boonngam-anong, an anti-coup activist prominent since 2006, was one of those summoned to the NCPO right after coup. However, he refused to answer the summons on the grounds that the NCPO’s power was illegitimate and continued posting anti-coup statements on Facebook and Twitter. In June 2014, Thailand’s national security agency traced the IP address linked to the posts to his residence. Sombat was charged with three separate charges: not answering the NCPO summons, instigating dissent, and bringing computer information that affects national security into the system.<sup>43</sup> Sombat was released on bail, but his cases are pending court-martial.<sup>44</sup>

The authorities targeted independent news outlets that operate online from undisclosed locations to avoid reprisals. Nut Rungwong (pseudonym), editor of the *Thai E-News* blog and news aggregator that has operated since the 2006 coup, was arrested for disseminating an article containing lèse-majesté content, although it was written by another writer based overseas.<sup>45</sup> He was court-martialed and sentenced to nine years in jail in November 2014. The military court reduced the penalty

39 Thai Netizen Network, “ICT Laws under NLA: wiretap powers in 4 laws not just ‘cybersecurity’; media academic insists ‘spectrum belongs to all of us,’” [in Thai], January 25, 2015, <http://thainetizen.org/2015/01/seminar-ict-laws-nbtc-nida>; iLaw, “draft prevention and suppression of materials that incite dangerous behavior law: child protection, or rights violation?,” [in Thai], February 10, 2015, <http://ilaw.or.th/node/3485>.

40 Thai Netizen Network, “Drafter insist: ‘security’ in draft cybersecurity bill is information security, not military security,” [in Thai], February 3, 2015, <http://thainetizen.org/2015/02/seminar-nbtc-surangkana-somkiat/>.

41 “Soldier joined on stage: ‘people’s rights and freedoms under cybersecurity law’ seminar,” [in Thai], *Prachatai*, February 1, 2015, <http://bit.ly/1UXfgg3>.

42 “Surangkana said drafters accepted criticisms on digital economy laws; will open closed door hearing next week,” [in Thai], *Prachatai*, February 25, 2015, <http://prachatai.com/node/58092>.

43 “Bringing false computer information into the system” is a cybercrime which has been repeatedly misapplied to content in libel prosecutions.

44 iLaw, “Sombat Boonngam-Anong : 116,” *Case*, accessed February 26, 2015, <http://freedom.ilaw.or.th/en/case/604#detail>.

45 Associated Press, “Thai news website editor jailed for ‘defaming king,’” *The Guardian*, November 24, 2014, <http://gu.com/p/43hy2/stw>.

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to four years and six months in prison after he confessed.<sup>46</sup> In June 2014, Katawut (pseudonym), an online radio operator, was charged with broadcasting lèse-majesté content. A military court sentenced him to 10 years in jail behind closed doors, reduced to 5 years because he confessed.<sup>47</sup> In a separate case, Banpot (pseudonym), another online radio operator, was charged with using online media to instigate hatred and publish lèse-majesté content. In January 2015, the army arrested at least six people allegedly associated with Banpot, all of whom were charged with lèse-majesté. The defendants were detained, all of their electronic equipment was confiscated, and all were forced to divulge their personal Facebook username and password. All six were accused of using Facebook or YouTube to distribute lèse-majesté speech, photos, and video clips.<sup>48</sup> The Thai public does not know the identity of the individuals behind Thai E-News, Banpot, or Katawut, but all of them have a significant fan base.

In addition to the media and citizen journalists, the NCPO also took numerous actions against political speech by regular internet users:

- Akaradej, a university student, was arrested over his Facebook posts in June 2014 and charged with lèse-majesté. The court sentenced him to five years in jail, reduced to two years and six months after confession.<sup>49</sup>
- Internet user Chaliew was accused of uploading Banpot radio clips to the website 4Shared. The content of this audio clip was deemed lèse-majesté. He was summoned by the NCPO in June 2014 and has since been detained. He confessed to the crime. In August 2015, the Criminal Court sentenced him to a three year jail term, suspended for two years.<sup>50</sup>
- Sirapob, accused of being the writer and poet behind the pseudonym “Roongsila,” was charged with posting three pieces of poetry deemed lèse-majesté on the website *Prachatai*. Five army officers arrested him while he was travelling in July 2014. His case is currently being tried in secret by the military court.<sup>51</sup>
- Thanee (pseudonym) was accused of sending an email linking to lèse-majesté content in 2010. He has been in custody since July 2014. His case is being tried in secret by the Criminal Court.<sup>52</sup>
- Charuwan, a factory worker in Ratchaburi province, was accused of posting lèse-majesté content on Facebook. She denied posting the content to her account, saying she was framed, but was detained by the military from November 2014 to February 2015.<sup>53</sup>
- Piya (pseudonym) was accused of owning a Facebook account, which he denied. In December 2014, the authorities charged him for publishing lèse-majesté content on the account. The case is pending court decision.<sup>54</sup>

46 “Web editor jailed for lese majeste,” *Bangkok Post*, November 25, 2014, <http://bit.ly/1ii4sXX>.

47 Khatawut, iLaw (Military Court 2014).

48 “Progress of 6 defendants on 112 cases, ‘Banpot’s network’ on Facebook,” [in Thai], *Prachatai*, February 4, 2015, <http://bit.ly/1MrNh3o>; Kawee, iLaw (Criminal Court 2014).

49 iLaw, “Akaradej: Student of Mahanakorn University of Technology,” Case, <http://freedom.ilaw.or.th/en/case/577>.

50 iLaw, “Report on Lèse Majesté prisoners after 2014 coup,” July 16, 2014, <http://bit.ly/1Ny677I>.

51 iLaw, “Siraphop: Article 112 (lèse majesté),” Case, <http://freedom.ilaw.or.th/en/case/622>.

52 iLaw, “Tanet,” Case, <http://freedom.ilaw.or.th/en/case/614>.

53 iLaw, “Jaruwan: Posting Lese Majeste message on Facebook,” Case, <http://freedom.ilaw.or.th/en/case/641>.

54 iLaw, “Piya,” Case, <http://freedom.ilaw.or.th/en/case/645#detail>.

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Sentences reached record lengths in August 2015, after the coverage period of this report. The 29-year-old Sasivimol was jailed for 56 years, reduced to 28 on confession, for seven Facebook posts considered *lèse-majesté*;<sup>55</sup> separately, Pongsak Sriboonpeng was jailed for 60 years, reduced to 30 years on confession, for Facebook posts considered insulting to the monarchy.<sup>56</sup>

In addition to arresting multiple Facebook users, police used Facebook Messenger as a kind of “bait” to trick Facebook users to reveal their sentiments toward the monarchy. For example, a user named Pongsak (pseudonym) was invited to discuss matters over the monarchy on Facebook Messenger. He was invited to travel to another province, where he was arrested upon arrival.

Later, police arrested Chayo (pseudonym) on the same charge, after Pongsak’s conversation log revealed that Chayo sent him statements and photos that are deemed *lèse-majesté* via Facebook Messenger.<sup>57</sup>

Cultural content was also subject to increased scrutiny. This is reflected in the recent court decision on the case of a satirical play, titled “Wolf’s Bride,” staged at Thammasat University in October 2013. Two activists who starred in this play were later prosecuted and the court ruled them guilty of *lèse-majesté*. They both received two years and six months in prison. Typically the court would suspend sentences involving defendants who have never committed a crime, but the court refused in this case, ruling that this play was disseminated on the internet, which was deemed “egregious conduct.”<sup>58</sup> Chakrawut, a musician, was accused of operating three Facebook accounts which posted nine incidents of *lèse-majesté* content between 2011 and 2014. He was summoned by the NCPO in July 2014 and tried at the Ubon Ratchathani Criminal Court. In July 2014, he was sentenced to 30 years in jail, reduced to 15 years after confession.<sup>59</sup>

Like any online environment, the Thai internet is fraught with misinformation, disinformation, fake news, and rumors, which are typically exposed and corrected by other internet users. Such content regarding the monarchy became cause for persecution after the coup. In February 2015, a fake Bureau of the Royal Household announcement pertaining to the king’s health was posted and widely circulated online. The police arrested a user they claimed to be the original poster, as well as the editor of ASTV, a mainstream media news website that posted the announcement and attendant article.<sup>60</sup>

Besides *lèse-majesté* and political speech, libel is a longstanding problem in Thailand. Clause 14(1) of the current computer crimes law criminalizes “bringing false computer information into the system.” Although false computer information and libel are completely different in the legal terminology, suing people under both laws concurrently has become the norm. Attorney generals and judges have shown no understanding of the differences between the two laws, nor the fact that “false computer information” in the cybercrime parlance means technical crimes such as hacking, not the

55 iLaw, “Sasivimol: Posted messages on Facebook,” Case, <http://freedom.ilaw.or.th/en/case/681>; Aubrey Belford and Pairat Temphairojana, “Thai courts hand down record sentences for royal insults,” Reuters, August 7, 2015, <http://www.reuters.com/article/2015/08/07/us-thailand-lesemajeste-idUSKCN0QC1D620150807>.

56 Agence France-Presse, “Man jailed for 30 years in Thailand for insulting the monarchy on Facebook,” *The Guardian*, August 7, 2015, <http://gu.com/p/4bbaa/stw>.

57 iLaw, “Freedom of Expression Bulletin January 2015,” February 4, 2015, <http://freedom.ilaw.or.th/blog/FOEBulletinJan2015>.

58 Achara Ashayagachat, “Charged scenes as dramatist pair jailed for lese majeste,” *Bangkok Post*, February 24, 2015, <http://bit.ly/1iPTdXt>.

59 iLaw, “Jakkrawut: A Musician in Ubon Ratchathani,” Case, <http://freedom.ilaw.or.th/en/case/354>.

60 “Police to charge ASTV Manager webmaster for disseminating fake royal announcement,” *Thai PBS*, February 7, 2015, <http://bit.ly/1FNz0Gz>.

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veracity of online speech. The vast majority of plaintiffs in these cases are government officials.

Examples of using computer crimes law to sue for libel in 2014 and 2015 include:

- The Ministry of Energy sued M.L. Kornkasiwat Kasemsri, an independent energy academic, for posting on his Facebook account that some diesel oil from Thailand is transported to Laos and sold at a lower price. The case is still pending trial.<sup>61</sup>
- The Royal Thai Navy sued the *Phuketwan* website for re-publishing a Pulitzer prize-winning Reuters article accusing Navy officials of profiting from a smuggling ring bringing Rohingya refugees from Myanmar. The Navy refused interviews to Phuket-based media and prohibits *Phuketwan* reporters from entering Navy bases. The case was pending at the end of the coverage period.<sup>62</sup>
- Natural Fruit, a canned fruit company, sued migrant labor rights activist Andy Hall over dissemination of research reports that allege violations of labor rights in the company's plants. The company is suing him in three separate cases, one of which uses the computer crimes law because the report was disseminated in online media. The case is still pending trial.<sup>63</sup>

During the same period, a number of computer crimes charges against journalists or public persons for libel ended in the plaintiff's decision to drop the lawsuit or in dismissal by the court, suggesting they lacked merit, but were filed to intimidate the defendant. In one example from August 2014, the Secretary General of the Office of the Administrative Courts sued the Thai Press Development Foundation and Isra Institute, which published a news article about a memo from the secretary general to the police commissioner in support of an officer's transfer. In November 2014, the Criminal Court dismissed the case on grounds that the plaintiff is a public person who must bear public scrutiny, and the defendant voiced opinion in good faith.<sup>64</sup> In a separate September 2014 case, TV Channel 3 sued Supinya Klangnarong, an NBTC Commissioner, over comments she made in interviews and tweets about internal conflict over the channel's transition to the digital system. In December 2014, Channel 3 withdrew the case.<sup>65</sup>

## Surveillance, Privacy, and Anonymity

In several cases where individuals were summoned or arrested, the authorities confiscated smartphones to peruse personal information and photos, or check for potential links to other people, before freeing the accused.

The NCPO has announced a clear policy regarding surveillance of internet users. A number of NCPO decrees and orders specifically mandate surveillance of online media. On June 23, 2014, Somyot Poompanmuang, deputy commissioner of the Royal Thai Police, publicly invited Thai people to "serve as eyes and ears" of the state. He encouraged everyone to take photos of people who display anti-coup symbols in public and online spaces, and submit those photos to the police. A monetary reward of THB 500 (US\$14) per photo will be paid if the police can arrest and prosecute the photo

61 iLaw, "Ministry of Energy vs M.L.Kornkasiwat," Case, <http://freedom.ilaw.or.th/en/case/629>.

62 iLaw, "Thai Royal Navy vs Phuketwan news agency," Case, <http://freedom.ilaw.or.th/en/case/554>.

63 iLaw, "Andy Hall: Computer Crime Case," Case, <http://freedom.ilaw.or.th/en/case/469>.

64 "Court dismissal of Direkrit's lawsuit against Isra over alleged favour seeking," [in Thai], *Isra News*, December 4, 2014, <http://bit.ly/1Qisuxk>.

65 iLaw, "Supinya Klangnarong: Defamation case against Channel 3," Cases, <http://freedom.ilaw.or.th/en/case/635>.

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subjects. He also urged the public to inform the police via the *Jah Hook* ("Owl Sergeant") Facebook page.<sup>66</sup> The MICT frequently said in interviews that the Thai government is monitoring private communication, such as the Line chat application.<sup>67</sup> The same authority also said on more than one occasion that it would send officials to offices of popular social media platforms such as Facebook, Google, and Line, to seek their cooperation on suspending some specific individuals' accounts. There is no confirmation to date whether or not these companies agreed,<sup>68</sup> after the planned meeting between NCPO, Google, and Facebook in Singapore was called off in May 2014.<sup>69</sup> NCPO Announcement 26/2014 mandated surveillance and monitoring of social media by military agencies.<sup>70</sup>

In September 2014, news reports said the MICT has ordered all ISPs to set up surveillance equipment at their data centers, implemented in an experimental phase from September 15.<sup>71</sup> Some users speculate that the equipment could facilitate man-in-the-middle attacks for use with popular platforms Google and Yahoo, by setting up fake, unprotected sites which prompt users to enter their username and password before they reach the layer of encryption that protects the genuine login pages.<sup>72</sup>

In February 2015, the Cabinet issued a resolution demanding that all users of pre-paid mobile phone cards and free Wi-Fi nationwide must be registered by July 31, 2015.<sup>73</sup>

The Cyber Scout program, which began in 2011, continues unabated. The program, executed jointly by the ICT and education ministries, trains students to monitor and report online behavior they deem a danger to national security. There are currently over 120,000 cyber scouts nationwide, spanning 88 schools. The curriculum stresses recruiting new members and training cyber scout leaders.<sup>74</sup>

## Intimidation and Violence

Circumstances surrounding the NCPO summonses indicated that even those who cooperated were subject to pressure. Individuals were required to sign a written agreement promising not to voice political opinion or criticize the NCPO. A number of people were asked their Facebook passwords through a process of psychological harassment and were told by military officers that their personal

66 Thai Netizen Network, "Looking back at LINE: Thai government's attempts at surveillance"; Charlie Campbell, "Rewards for Photos of Anticoup Activity," *TIME*, June 24, 2015, <http://ti.me/1mgM4xK>.

67 Jon Russel, "Thailand's Government Claims It Can Monitor The Country's 30M Line Users," *TechCrunch*, December 23, 2014, <http://tcrn.ch/1CugzZK>.

68 Thai Netizen Network, "Looking back at LINE: Thai government's attempts at surveillance"; Darrel Etherington, "Thai Police Request Access to Line's Messaging Records For Criminal Investigations," *TechCrunch*, August 13, 2013, <http://on.tcrn.ch/1Midy>; Thaweepon Kummetha, "Thai authorities reportedly to conduct mass surveillance of Thai internet users, targeting lèse majesté," *Prachatai*, September 10, 2014, <http://bit.ly/1FNypol>.

69 Newley Purnell and Nopparat Chaichalearmmongkol, "Thai Junta Says Facebook, Google Meetings Called Off," *The Wall Street Journal*, June 2, 2014, <http://on.wsj.com/1ii0rTr>.

70 iLaw, "Before-after coup: self-censorship, online media censorship, community radio shutdowns, and other incidents," January 6, 2015, <http://bit.ly/1DYAs95>.

71 "Thai Authorities Reportedly to Conduct Mass Surveillance of Thai Internet Users, Targeting Lèse Majesté," *Prachatai*, September 10, 2014, <http://prachatai.org/english/node/4331>.

72 Thai Netizen Network, "STARTTLS is not presented in SMTP server within Thailand," Facebook Group, September 8, 2014, <http://on.fb.me/1KnBcWu>; "Google, Yahoo SMTP Email Servers Hit in Thailand," *Telecom Asia*, September 12, 2014, <http://bit.ly/1u17zau>.

73 "Cabinet Approves Mandatory SIM Card Registration," *Khaosod English*, February 20, 2015, accessed February 28, 2015, <http://bit.ly/1grHdJM>.

74 Ministry of Information and Communication Technology (MICT), "ICT Ministry continues expanding Cyber Scout network to help online society," [in Thai], May 26, 2015, <http://bit.ly/1MczeFe>; MICT, "ICT Ministry joined forces with 88 schools, expanding Cyber Scout network to help take care of clean online society," [in Thai], March 6, 2015, <http://bit.ly/1iwT0si>.

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online conversations would be periodically monitored.<sup>75</sup>

In some cases, the military asked activists to post a statement on their Facebook account. This dictated statement essentially says that they have been treated with due respect by the military, police, and government officers, and that they will cease all forms of political movements to cooperate with the government in developing the country and supporting reform efforts.<sup>76</sup>

Although the junta often claims that the coup was intended to fix deep-rooted problems in society and “return happiness” to the people, many new cases of intimidation arose in the social and political environment they established. Most were based on alleged violations of national security or lèse-majesté, which prompted persecution from fellow internet users as well as the state. Royalist groups organized online to report their opponents and file criminal charges against them. “National Trash Collecting Coalition,” a group of self-proclaimed vigilantes, has sued many internet users over lèse-majesté, including Surachai Sae-dan, an activist they accused in January 2015 of hosting an online radio show with lèse-majesté content.<sup>77</sup> Tanat Tanawatcharanon, a former actor known as Tom Dundee, was sued for lèse-majesté by the “Network of Thai Subjects Who Volunteer to Protect the Monarchy in Facebook” over political speech he made on the red-shirt stage in November 2013, which someone taped and distributed on YouTube in June 2014. He was arrested in June 2014.<sup>78</sup>

Facebook’s “report” feature, which allows users to flag content which violates the site’s terms, was used as a tool for harassment and intimidation. After rumors surfaced that Tang Acheewa (pseudonym), a red-shirt activist, was granted political asylum in New Zealand, the Facebook page of United Nations High Commissioner for Refugees (UNHCR) was bombarded with condemnation until the office temporarily suspended the page.<sup>79</sup>

## Technical Attacks

There have been sporadic reports of hacking attacks on online news outlets in Thailand in the past. None were documented during the coverage period of this report, though hackers did target government sites.

75 iLaw, “Summary of freedom of speech 2014 part 1/5: individual summons and retention under martial law,” January 6, 2015, <http://bit.ly/1grFRir>.

76 “Army called 17 activists to report-control Facebook posts for reform,” [in Thai], *Prachatai*, November 8, 2014, <http://prachatai.com/node/56405>.

77 iLaw, “Freedom of Expression Bulletin January 2015,” <http://freedom.ilaw.or.th/en>.

78 iLaw, “Tom Dundee: Make Lèse majesté Speeches,” Case, <http://freedom.ilaw.or.th/en/case/585>.

79 Prachachai English, “Thai royalists condemn UNHCR as “ungrateful to Thailand” after it grants refugee status to lèse majesté suspect,” *Prachatai*, January 12, 2015, <http://prachatai.org/english/node/4673>.